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Too Much Law

THAT the overwhelming mass of legal sources and authorities, from which most countries suffer nowadays, creates problems for the teacher of law as well as for the practitioner is no surprise. A fellow feeling is inevitably evoked in the English solicitor by the discussion at the International Congress of Comparative Law at Barcelona this week on the difficulties which beset teachers applying traditional methods of instruction in the face of an enormous and ever-increasing bulk of material. The broad conclusion reached by the Congress was that it was necessary to find the actual centre of gravity of the legal system in its contemporary social context, and then to lead the student to an understanding of the law as subsisting in this central core, thus training him in the processes of legal thought. A method must then be found by which he can be led to mastery of the mass of the law depending from this centre. In essence, this approach seems to us not dissimilar from the attitude which the non-specialist practitioner is forced willy-nilly to adopt. In present conditions, he can but arm himself with a good knowledge of legal principles and a sound technique for looking up detailed rules of law as required. The problem is, however, a continuing one and becomes more difficult for each succeeding generation. It may well be that methods devised to meet conditions as they are to-day will no longer serve in the years to come, and ultimately ever-increasing degrees of specialisation may be the only answer. Nevertheless, specialisation is a disintegrating process and some hard thinking is required now and in the future if the coherence of the world's legal systems is to be preserved.

Staff Problems

THE eve of The Law Society's Annual Conference is an opportune time to raise one of the most serious problems confronting the legal profession at the present moment, that of staff. There has for some time past been a serious shortage of competent shorthand-typists. Scores of solicitors now apply for the services of one typist, and submit themselves to cross-examination about the pay and conditions of work, only to be told condescendingly at the end of the interview that they will be informed of the result later. Mere railing against the economic situation which has produced this phenomenon leads nowhere, and the Solicitors' Staff and Offices Committee may have been doing some hard thinking on the subject. Some co-operative local action through the individual provincial law societies to mobilise a pool of part-time labour might do something to relieve the situation.

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One Generation and Another

THE cockfighting case in the Chester Magistrates' Court on 14th September, in which thirty-six people, many of them middle-aged and elderly, were found guilty of offences under the Cockfighting Act, 1952, invites the reflection that it ill becomes us of the older generation to rebuke those freshly emerged from childhood for allowing their exuberance at the discovery of rhythm to degenerate into mild rowdyism. Worse things have happened on boat race night than the public dancing and traffic obstruction reported from various parts of the country as having followed the showing of a film on the so-called " rock 'n' roll " theme. Perhaps the only reason for giving prominence in the Press to this not alarming and certainly not unprecedented craze is the lack of news from the courts during the vacation. On the other hand, the fact that the BISHOP OF WOOLWICH wrote a letter to *The Times* of 14th September containing phrases like " maddening effect," and " relaxing of all self-control " may prejudice the minds of some members of the older generation who are also justices of the peace against any youngsters who come into minor conflict with the police. We do not doubt that the majority of benches will display a proper sense of proportion.

Advocates in Practice Arbitrations

THE recent ban by the Bar Council on barristers taking part in practice arbitrations as advocates is not being accepted by the Institute of Arbitrators without further question. In a recent address to members by the President of the Institute, the ruling was described as " unfortunate." The ground that it was a form of advertising for an advocate to take part in practice arbitrations was repudiated, as the object of such arbitrations was purely educational. The address is reported in the summer issue of the Institute's quarterly magazine, *Arbitration*, and in the same issue appears the report of an address by a past President to the Institute of Structural Engineers, in which he complained that the ruling came when the programme for the winter was fixed, or in the course of being fixed. The Institute of Arbitrators had made representations and were taking other means to overcome the difficulty, so that next session the programme can be resumed. It would seem from a perusal of other pages in *Arbitration* that the difficulty is not serious. Immediately preceding the report of the President's address to members a case is reported in which a taxing master allowed the costs of a person who had appeared on behalf of a party at the hearing of an arbitration and who was neither a barrister nor a solicitor. If the decision had been otherwise, the report states, " it would have imperilled the right, commonly exercised, of architects, quantity surveyors, land agents, insurance and commercial experts and others to act, except as expert witnesses, for parties in arbitration proceedings." The " other means " of overcoming the difficulty, if any, seem fairly close at hand.

Church Government

" THE Layman in Church Government " (Church Information Board, 1s. 9d., by post 1s. 11d.) is the title of a guide issued on 10th September to two important Measures of the Church Assembly which received the Royal Assent on 5th July. They are the Representation of the Laity Measure, 1956, and the Parochial Church Councils (Powers) Measure, 1956, which consolidate with some amendments the existing law relating to the position of the laity in the government of the Church of England. The Measures are intricate and the guide gives clear and authoritative information grouped under the headings " The Electoral Roll " ; " The Annual Meeting " ; " The Parochial Church Council : Constitution and Procedure " ; " Parochial Church Councils : Powers and Duties " ; " Ruri-Decanal and Diocesan Conferences and the House of Laity " ; and " Miscellaneous Matters." The guide should have a special appeal to church laymen who are also lawyers. It is, in effect, a small legal text-book, with a historical introduction, a comprehensive analysis of the two Measures and an appendix of forms.

RUNNING DOWN CASES: CONDUCT BEFORE ACTION—I

THE first intimation which a solicitor normally has of a running down case is his client's arrival in his office, or a telephone call asking for an appointment to see him to discuss the matter. It will, of course, be appreciated that the term " a running down case " includes not only those circumstances where a motor car, motor bicycle or pedal bicycle has run down a pedestrian but also where such a vehicle has collided with another car, motor bicycle or pedal bicycle, and it may even, in exceptional circumstances, apply to the case where a pedestrian who has failed to take proper care for himself thereby causes injury to a vehicle or its driver ; he, the pedestrian, will then be the defendant and not, as is generally assumed, the plaintiff. For an example of this, the case of *Nance* v. *British Columbia Electric Railway* [1951] A.C. 601 may be studied.

Taking instructions

To avoid wasting a great deal of the solicitor's time and that of his client the first question which should be asked of the client, whether he is the owner of a car, motor bicycle or pedal cycle, or, indeed, if he is only a pedestrian, is whether or not he is insured against the risk which has befallen him. If he is so insured, then further inquiry of the client will be fruitless as the insurance company itself will manage the case under the terms of the contract of insurance, and the best advice which can be given to the client in these circumstances is to communicate with his insurance company without delay, as the majority of such policies require that the insured person should report the accident within, say, forty-eight hours or seven days.

In some cases, and the writer finds that a motor cyclist victim is the most frequent plaintiff of this type, a third party insurance contract only has been entered into which does not cover the motor cyclist himself against the losses which he suffers due to his personal injuries or due to the damage to his vehicle. In these circumstances when instructed, the solicitor may well approach the insurance company or broker concerned in the third party insurance, who, upon payment of any expenses incurred to date and on

being satisfied that a third party claim is not likely, may be prepared to hand over the papers relating to the case. Failing this, the insurance company or broker will usually be pleased to co-operate with the solicitor and to supply copies of statements, plans and other relevant documents.

Having established that the victim is the person solely interested in, or affected by, the claim it becomes necessary for the solicitor to acquaint himself fully with all details of the surrounding circumstances, and it cannot be too often or too strongly pointed out that in such cases it is essential that all the facts and relevant information are obtained without delay, as the memories of persons actually involved in these accidents, and of witnesses of the accident, rapidly fade afterwards, and if several weeks are allowed to elapse before inquiries are made of the witnesses it may well be that valuable information is lost.

It is suggested that, in much the same way as preliminary inquiries in conveyancing matters are printed in a well recognised form, a solicitor might well find it advantageous to spend half an hour constructing for himself a questionnaire indicating the information which he requires to conduct a running down case, and with which he can refresh his memory when faced by his client for the first time.

There is set out below a specimen questionnaire of this type, and it is, of course, only intended as a specimen and not as a conclusive and authoritative example of its type.

Questionnaire to be used in cases of Road Accidents

1. Full name.
2. Address of home.
3. Telephone number of home.
4. Business address.
5. Business telephone number.
6. Age.
7. Marital status.
8. Number of dependent children under the age of 16.
9. Name and address of employers if not self-employed.
10. National Insurance number.
11. Address of local office of the Ministry of Pensions and National Insurance.
12. Date of accident.
13. Time of accident.
14. Place of accident.
15. Brief details of type of accident.
16. Number of vehicles involved.
17. Type of vehicles involved—
    Make :
    Type of body :
    Year of make :
    Horse-power :
    Registration letter and number.
    Purpose for which vehicle being used.
18. Drivers of vehicles involved.
    Name of driver at time :
    Address :
    Age :
    Is driver—
    (*a*) Owner.
    (*b*) Owner's paid driver.
    (*c*) Owner's relative or friend.
19. Light conditions and visibility.
    What lamps on cars or street were lit :
20. Road conditions.
21. Quantity of traffic about.
22. Was horn sounded ? How many times ?
23. A sketch of the area in which the accident occurred, indicating the north point, the main road, subsidiary road, position of any witnesses and position of any road signs indicating particular priorities or otherwise.
24. Names and addresses and telephone numbers, if possible, of witnesses—
    (*a*) Passengers in vehicles.
    (*b*) Independent witnesses.
25. Name and number of any police officer who took notes at the scene of the accident.
26. Any statement as to fault made by witnesses or drivers at the time of the accident.

This is only part of the suggested questionnaire ; at the first interview the solicitor should also obtain full details of the injuries and damage suffered by his client and his client's property, but as damages generally will form part of subsequent articles there will be included in those articles further questions which would form the second part of the questionnaire.

Assembling the facts

At this point the solicitor will begin to have some idea of the issues involved in the case and will have been able to take from his client a full statement of the circumstances in which his accident occurred based upon the questions set out above.

It is the writer's experience that his next step, if possible, should be to go himself to the site of the accident and make himself familiar with it. As a vehicle has been involved in the accident it is advantageous to drive past the scene of the accident from both directions, or indeed from all directions, once or twice and then to park (taking care not to provoke attention from the police) and to study the site of the accident on foot, measuring up the width of the roads and the reported positions of the vehicles and the landmarks, such as road signs, lampposts and the like referred to above.

The witnesses, if they are willing to do so, should then be approached to give their versions of the way in which the accident occurred. It is considered advisable that they should be approached by letter first and that a letter written to them should indicate the solicitor's interest on behalf of his client and should ask them for their account of the way in which the accident occurred.

As a matter of courtesy and to ensure at least some sort of reply, even if it is only to the effect that the witness does not wish to be involved in the matter, it is advisable to enclose a stamped addressed envelope.

If the reply received indicates that the witness is likely to prove co-operative and friendly, then arrangements should be made either for him to be visited or for him to be asked to visit the solicitor's office with a view to a full statement being taken from him about the way in which the accident occurred. At this interview the writer's experience is that rather than leading the witness along the lines of the questionnaire above it is better to allow him to talk freely and to describe the accident in his own words and to obtain from him his general impressions, before asking specific questions intended to draw particular replies which will enable the solicitor to form his own opinion upon liability.

J. G. F.

THE NEW NATIONAL INSURANCE LEGISLATION

THE new legislation about National Insurance and Workmen's Compensation consists of three Acts which increase the benefits payable under the earlier Acts. The writer has the greatest sympathy with his fellow practitioners who have to grapple with dull and intricate problems of this kind (remunerative though they sometimes are), and wishes to say, unashamedly, that in his opinion the best way to approach them is to get the free explanatory leaflets which the Ministry of Pensions and National Insurance issues to the public. They can be obtained from any local office, and possession of them spares one the humiliation of lengthy and unsuccessful cogitation over obscure provisions, while trying to advise a client who subsequently advises the adviser by pulling the official leaflet out of his pocket. This article therefore follows the plan of first stating what are the Acts, the new regulations, and the relevant leaflets, and then of making some further comments.

The Acts, regulations and leaflets

(1) *The Family Allowances and National Insurance Act*, 1956

This contains nine sections, and authorises increases of family allowances and widows' benefits, plus some miscellaneous provisions to deal with difficulties raised by earlier Acts. More will be said of it (and of the regulations) later in this article. Here it should be noted that the appointed days for the coming into operation of the various sections range between 1st August and 2nd October, 1956. This is because of the Family Allowances and National Insurance Act, 1956 (Commencement) Order, 1956 (S.I. 1956 No. 1072 (C.7)).

The new regulations are :—

(*a*) The National Insurance (Industrial Injuries) (Widow's Benefit and Miscellaneous Provisions) Regulations, 1956 (S.I. 1956 No. 1188), which came into operation on 4th August, 1956.

(*b*) The National Insurance (Widow's Benefit and Miscellaneous Provisions) Regulations, 1956 (S.I. 1956 No. 1199), which came into operation on 10th August, 1956.

(2) *The National Insurance Act*, 1956

This is a short Act, which allows retired persons, and widows, to earn increased amounts without loss of benefit. It came into operation on 30th July, 1956 (National Insurance Act (Commencement) Order, 1956 : S.I. 1956 No. 1071 (C.6)), and its effect is considered later in this article.

(3) *The Workmen's Compensation and Benefit (Supplementation) Act*, 1956

This Act is important for those who are still entitled to workmen's compensation. It came into operation on 28th August, 1956 (Workmen's Compensation and Benefit (Supplementation) Act, 1956 (Commencement) Order, 1956 : S.I. 1956 No. 1128 (C.8)). We examine it later.

The new regulations are the Workmen's Compensation and Benefit (Supplementation) Regulations, 1956 (S.I. 1956 No. 1147), which came into operation on 31st July, 1956.

(4) *The explanatory leaflets are as follows :—*

(*a*) N.I.84. (July, 1956.) "Dependency Benefits for Children." This leaflet amends leaflets N.I. 5, 12, 14, 15, 16, 17A, 49, and P.N.2.

(*b*) N.I.85. (July, 1956.) "Changes in Widows' Benefits under National Insurance."

(*c*) N.I.86. (July, 1956.) "Changes in Industrial Death Benefit."

(*d*) N.I.88. (July, 1956.) "Retirement Pensioners and Widow Pensioners who Work. New Earnings Rule from 30th July, 1956."

(*e*) N.I.89. (July, 1956.) "Changes in Conditions for Widowed Mother's Allowance."

(*f*) N.I.90. (July, 1956.) "Widowed Mother's Allowance (40/–)."

This is a specimen order book for payment of the allowance, showing the instructions to the beneficiary.

(*g*) FAM.33A. (August, 1956.) "Family Allowances Acts. Children in the Care of Public Bodies or Removed from the Control of their Parents or Guardians."

(*h*) W.S.2. (July, 1956.) "Supplement to Workmen's Compensation."

The Family Allowances and National Insurance Act, 1956

This Act (plus the two sets of regulations mentioned earlier) deals with—

(1) Family allowances, under the Family Allowances Acts, 1948 and 1952.

(2) Benefits under the National Insurance Acts, 1946 to 1955.

(3) Benefits under the National Insurance (Industrial Injuries) Acts, 1946 to 1954.

Thus three streams of legislation join in one Act, and the mixture is complex, and made still more complex because the question how much may be earned without loss of benefit is answered by another Act (the National Insurance Act, 1956).

Family allowances

Dealing first with family allowances, the rate for children other than the first two is increased to ten shillings per week, as from 2nd October, 1956.

As from 1st August, 1956, there are new age limits for family allowances. This is provided for by s. 1 (2), and the changes are clearly explained in leaflet N.I.84. Briefly, they relate to schoolchildren, apprentices, and handicapped children. It should be noted that the new limits also apply to benefits for dependent children in national insurance and industrial injuries cases, and under the pneumoconiosis and byssinosis benefit schemes.

Section 5 makes important changes in relation to children under eighteen who have been committed to the care of a local authority, by court order, under the Children and Young Persons Act, 1933, or under the Children and Young Persons (Scotland) Act, 1937. Notwithstanding anything in the two Acts mentioned, or in the Children Act, 1948, or in the order, the authority is given discretion to allow the child "to be under the charge and control of a parent, guardian, relative or friend," and, in such a case, the authority can also apply to the court to revoke the order. The bearing of all this on family allowances is that a child who is in the care of a local authority (even when boarded-out) is excluded from a family for allowance purposes, but this now ceases to be the case if the authority allows the child to be with a parent, guardian, relative or friend. The position is fully set out in leaflet FAM.33A, which also explains (paras. 12–14) the situation about children in hospital or at boarding schools, or in the care of charitable organisations. The appointed day was 1st August, 1956.

While it is not likely that many practitioners will be affected by reciprocal arrangements made by the United Kingdom with other countries about family allowances, it should be mentioned here that s. 4 confers additional powers in relation to these arrangements.

Widows' national insurance benefits

Section 2 makes important changes, which not only increase the benefits for widows with children but also bring within the scheme (for retirement pensions as well as for widows' benefits) widows who were previously outside it because they had been married for less than ten years. That period is now three years (see reg. 2 of S.I. 1956 No. 1199), and the appointed day for the operation of this new rule was 21st August, 1956. The 2nd October, 1956, is the appointed day for the increase of benefits for widows with children.

These changes are explained in leaflet N.I.85, which should be read in conjunction with leaflet N.I.13, where the general position about widows' benefits is expounded. It must be noted that the widow has to take the initiative, by claiming, as explained in paras. 3 and 9 of leaflet N.I.85, except in the cases specified in paras. 3 and 7. A claim should also be made in the circumstances specified in paras. 4 and 5, though this point is perhaps not made entirely clear in the leaflet.

Leaflet N.I.85 does not mention the position of persons not resident in Great Britain, but this is dealt with in the extremely complex regs. 12 and 14 of S.I. 1956 No. 1199. The effect seems to be that a widow cannot get the increase until she returns to Great Britain, unless she falls within the exception specified in para. 12 (4) (*b*); i.e., where a woman becomes entitled to retirement pension under both her husband's insurance and her own insurance.

By virtue of s. 2 (5) (which, however, does not yet seem to have come into operation), a widow who ceases to be entitled to a " widowed mother's allowance " will not become entitled to a " widow's pension " unless she is over fifty (previously the age was forty), except in a case where the husband died before " the appointed day." This point does not appear to be mentioned in leaflet N.I.85, but the reason may be that s. 2 (5) is not given an " appointed day " by the Appointed Day Order (S.I. 1956 No. 1072 (C.7)).

Section 3 (which came into operation on 1st August, 1956) deals with the problem of potentially polygamous marriages, by providing in effect that a widow of such a marriage can get benefit, if the marriage has at all times been monogamous. Hitherto, such claims have failed (see the Commissioner's decisions R (G) 6/51, R (G) 18/52, R (G) 11/53, R (G) 3/55, and R (G) 7/55), but they would now succeed, and it also seems clear that the section is retrospective, and that a claim which failed should now be made again. That the Ministry takes this view is shown by para. 10 of leaflet N.I.85, and there is, in the circumstances, strong ground for contending that good cause is proved for failing to claim within the prescribed time. An earlier claim would certainly have been rejected (in the then state of the law), and some assistance on " good cause " may also be obtained from the unemployment decision R (U) 6/52, where a seasonal worker was held to have good cause for delay in claiming, as his previous claim had been rejected by the local insurance officer, and, on appeal, by the appeal tribunal.

Widows' industrial injuries benefits

The new Act also affects widows whose husbands died as the result of industrial accidents. The changes are similar in principle to those made for widows under the national insurance system, but the increases are larger. The position is explained in leaflet N.I.86, which should be read in conjunction with the earlier leaflet N.I.10, where industrial death benefit is comprehensively dealt with.

Constables and firemen

The point is not mentioned in the new Act, but reg. 4 of S.I. 1956 No. 1188 amends reg. 33A of the National Insurance (Industrial Injuries) (Benefit) Regulations, 1948, by providing for payment of unemployability supplement to certain former constables and firemen at 20s. per week, instead of the previous rate of 7s. 6d. per week. The appointed day for this increase was 28th August, 1956. " Unemployability supplement " is dealt with in leaflet N.I.7 of July, 1956 (" Extra Benefits for Industrial Disablement "), but the leaflet was issued before the new increase came into operation, and therefore does not mention it in paras. 13 and 15, where constables and firemen are referred to.

How much can be earned without loss of benefit ?

As already stated, this question is now answered by the National Insurance Act, 1956, which came into operation on 30th July, 1956. The Act allows widows, and retirement pensioners, to earn more than was previously the case. The altered position is explained in leaflet N.I.88 (" Retirement Pensioners and Widow Pensioners who work. New Earnings Rule."), and in leaflet N.I.89 (" Changes in Conditions for Widowed Mother's Allowance "). There is also a very useful short summary of the new rules in Pt. 3 of leaflet N.I.85 (" Changes in Widows' Benefits under National Insurance "). " Earnings " comprise every kind of payment from an employer, including board, lodging, coal, light and rent-free premises. The Commissioner's decisions on this difficult subject are listed in Groups 8–8E of the Commissioner's Index. They deal with almost all conceivable problems. In general, income from investments is not " earnings." In CP 70/50 (KL), the Commissioner held that " the letting of a single house or flat is not an occupation." Similarly, in CP 129/50 (KL), " A retired coal dealer, who owned and let four buildings, performing no services or other work, was not gainfully occupied." On the other hand, as is shown by R (P) 9/55, directors' fees are " earnings." The profits made in business by a self-employed person are " earnings."

To arrive at net " earnings," deductions can be made, as explained on the back of leaflet N.I.88. Fuller information can be obtained from the decisions listed in Group 8B of the Index. In particular, R (P) 3/56 shows that, though income tax under P.A.Y.E. *can* be deducted, other income tax cannot be deducted.

When net " earnings " have been computed, the position briefly is that, for " widowed mother's allowance," 60s. per week can be earned without loss. Between 60s. and 80s., sixpence is deducted for each complete shilling. Over 80s., 10s. is deducted for the first 20s. over 60s., and then 1s. for each 1s.

For " retirement pensions " and " widows' pensions," 50s. per week can be earned without loss. Between 50s. and 70s., sixpence is deducted for each complete shilling. Over 70s., 10s. is deducted for 20s. over 50s., and then 1s. for each 1s.

Supplement to workmen's compensation

This is provided under the Workmen's Compensation and Benefit (Supplementation) Act, 1956, and the 1956 Regulations

(S.I. 1956 No. 1147). The position is explained in leaflet W.S.2 ("Supplement to Workmen's Compensation") which should be read in conjunction with Pt. 2 of leaflet N.I.7 of July, 1956 ("Extra Benefits for Industrial Disablement"). The subject is too complex to be dealt with in a short article, but the leaflets should certainly be examined by any practitioner who still has unsettled workmen's compensation cases. In particular, it should be noted that a lump sum settlement recorded *after* 5th July, 1956, does not affect the right to a supplement (see para. 7 of leaflet W.S.2).

CONVEYANCING IN NEW ZEALAND

WHEN seen by an English solicitor, conveyancing in New Zealand appears to differ in a remarkable way from the practice in England. This is the more surprising when it is remembered that New Zealand was colonised from Britain, and that the first organised settlement began as recently as 1840. To understand the New Zealand practice, some history must be considered.

Before 1840, New Zealand was occupied by Maories, who had their own customary (and very complicated) rules of ownership of the entire country. There was no ownership or vacant land at all. A very small number of European farmers and settlers were living at that time in New Zealand, mainly in the north of the North Island, and these settlements had come into existence by whalers and missionaries purchasing land from the Maories. These Europeans, therefore, held their land under titles based on Maori law.

The advent of the European caused great disorder and disturbance in New Zealand, and eventually it was decided that Britain should take over the country. On 29th January, 1840, Captain Hobson arrived at Waitangi, North of Auckland, in the North Island, and met a large number of Maori chiefs. Captain Hobson announced that the Colony of New South Wales now included New Zealand, and that he had been appointed Lieutenant-Governor. A few days later the Treaty of Waitangi was signed by a large number of the chiefs, whereby they accepted the sovereignty of Queen Victoria and became her subjects.

Captain Hobson then announced that no direct purchases of land from the Maories would be allowed in the future, and that only the Crown would have the power to buy this land. All existing European land titles were declared invalid unless confirmed by the Crown. (In fact, the European settlers had to submit to an inquiry by Government officials, who confirmed the titles of those who had bought reasonable amounts of land at a fair price, and scaled down, or rejected entirely, the claims of speculators.) Possibly, also, at this time, New Zealand land law received some influence from Australian practice, because some of the early Government officials came from New South Wales, a colony already fifty years old.

It follows from this that all ownership of land (other than Crown land and Maori Customary land) is, in New Zealand, based on a Crown grant, which may be recent, and must always have been dated since 1840. In the view of the writer, this has influenced the scope and meaning of the fee simple estate, and has made it a somewhat more restricted form of ownership than it is in England. In particular, this is shown in the strict rules for the dividing up of land (subdivision in New Zealand) and in the rules that restrict the right to aggregate holdings of farm land.

The Land Transfer Office

By necessity, New Zealanders are expert in the art of simplifying procedure and reducing clerical work. The Land Transfer Office, which uses a modified Torrens system, is typical of this. The whole country is divided into surveyed "sections" and these are marked permanently on the ground. All further sub-divisions of these sections are shown on extraordinarily detailed plans deposited at the Land Transfer Office, and dealings may only take place in parcels of land ("sections") shown on these deposited plans. All such parcels are also marked out on the ground by survey pegs. Under the Land Transfer system there is no way in which title can be acquired by possession, nor any rules about prescription and so, once a section has been surveyed and marked, and registered in the Land Transfer Office, it becomes a fixed entity which can be transferred very easily. There is no need for inquiry about adverse possession, nor about easements and boundaries. Local land charges, generally speaking, have to be registered against the land itself at the Land Transfer Office and so must all tenancies over three years in duration.

Unlike the Land Register in England, the Land Transfer books are public. Anyone may make a personal search and examine the title to any land without permission from the owner. Land certificates are written on draft size sheets of stiff paper and contain a plan of the land and a description by reference to the master deposited plan, in which the particular section lies. The name of the proprietor is stated in the certificate and also particulars of his estate, whether freehold, leasehold or a life estate, or perhaps a holding in shares. Transfers and mortgages and other matters are noted on the land certificate by memoranda written by the Land Registrar.

Land certificates are issued in duplicate, one copy being held by the proprietor. The other copy is bound up in the register book with other certificates. These register books are kept in very accessible racks which serve also as desks. All searching is done standing at these desks by solicitors and public personally. Details of easements, road widening and the like are merely referred to on the land certificates, and the original transfers and other documents can be obtained on application from the Registrar.

There are no official searches and no business is done through the post, and solicitors must either attend the registry in person or employ agents. Personal attendance is made a little more easy because there are a number of Land Transfer Offices, each situated in a large city where the records for the area are kept.

Dealings in land

While transfer of a land section is easy, alteration of a section itself is difficult. If the section is to be divided up (subdivision) a registered surveyor must prepare a new deposited plan showing in great detail and with extreme accuracy the new layout. Roads, footpaths, boundaries and drains must be shown, together with the exact measurements and bearings of their position. The local authority must then approve the plan, after which the plan is deposited at the Land Transfer Office and dealings may commence.

When land is subdivided, the Crown claims part of the land as a reserve, that is to say, before permission to subdivide is given, the land owner must include in the new layout a dedication or reserve to the Crown, or a gift to the local authority of a proportion of the area of the land which is to be subdivided. This reserved land may be used as a park or sports ground or as a community hall or for some other purpose. If the area is small, the land may simply be sold by the Crown, and where only a small area of land is subdivided a money contribution may be paid in lieu of the reservation of land. This might be £15 in the case of a building plot.

Something similar is done when easements are created or altered. Detailed plans must be prepared and approved by the local authority. A path or road must be made up (formed) to the satisfaction of the council's engineer before the easement plan may be passed and filed at the Land Transfer Office. Rules also provide that a section of land must have a frontage to a public road, and if no road exists one must be built before the transfer may be completed.

As regards aggregation (which applies to farm land alone), New Zealanders appear to believe that farms can be too big as well as too small. A purchaser of farm land must obtain the approval of the Land Valuation Court before the sale can be completed. The court will approve the transaction if it is satisfied that it is reasonable and that the buyer will not thus acquire an undue amount of land. The sale is a nullity if the court does not give approval.

From all this it will be seen that whereas in England the fee simple estate includes the right to sell the whole or any part of the land to any other person, this is not the case in New Zealand. In New Zealand the fee simple includes the right to sell the whole of the section to any other person (excepting farm land), but there is no absolute right to sell a part, or to alter the land by creating easements over it, or by attaching easements to it.

Other forms of land tenure

Although in many ways conveyancing in New Zealand is simplified, land law is for historical reasons in some respects more complicated than it is in England. The situation could, perhaps, be compared to that in England before 1925, when copyhold tenure existed and when there were local rules of descent.

First of all, there exists in New Zealand, mainly in the North Island, a large area of land held by Maori Customary Tenure. By a long and laborious process the original Maori customs—cultivation rights and rules about hunting and fishing—have been re-written in European terms. In a general way, Maori Customary land is now similar to settled land in England. The Trustee for Maori Affairs is a kind of "tenant for life" and he holds much of the legal estate. He has some limited powers over the land, and may, for example, sell parts of it with the consent of the Minister. Apart from this, he administers the land on behalf of the Maori owners who occupy the land itself for residential, farming and business purposes, including the maintaining of tourist resorts. The original Maori social organisation was on a tribal and family basis, and in modern times they have used their lands in a similar way, but with modern methods, sometimes using the limited liability company as an aspect of their tribal life.

Another class of land which may also be said to be subject to separate rules is Crown land. These areas of land are very great in extent in New Zealand, and they have come into existence mainly as a result of purchases of land from the Maories. A government department administers this land and deals with it locally on the advice of boards of local people. Crown land is sometimes sold off as building plots or for factory sites and some farms are for sale, freehold, but the largest areas are leased to tenants. This system of leasing enables the State to reorganise the farm or other holding from time to time as changes in farming or other kinds of land use occur.

There is one small and now less important class of land holding where the title is not registered at the Land Transfer Office. These lands correspond fairly closely to unregistered land in England, and possessory title, prescription and examination of title deeds in proof of ownership all continue. Very little of this land remains in private ownership.

Similarities and differences

The actual law relating to land ownership is basically similar to that in England. There are freehold and leasehold estates, mortgages, contracts and easements similar in form and effect to those in use in England. Land is subject to trusts and it vests on death in executors or administrators. Under the Land Transfer Acts rules exist similar to the "curtain" principles of the property statutes.

The differences between the English and New Zealand systems are greater than can be seen from a perusal of the text-books. These differences illustrate in an interesting way the manner in which English law is adapted to fit the changing circumstances of a new country.

C. T. W.

THE SOLICITORS ACTS, 1932 TO 1941

On 31st August, 1956, an order was made by the Disciplinary Committee constituted under the Solicitors Acts, 1932 to 1941, that JOHN FENWICK MOORE, of Friends Provident Building, Nos. 37–39 Corn Street, Bristol 1, be suspended from practice as a solicitor for a period of one year from 14th September, 1956, and that he do pay to the applicant his costs of and incidental to the application and inquiry.

On 31st August, 1956, an Order was made by the Disciplinary Committee constituted under the Solicitors Acts, 1932 to 1941, that there be imposed upon EDWARD FREDERICK POWER GREEN, of 199A, Victoria Street, London, S.W.1, a penalty of one hundred pounds, to be forfeit to Her Majesty, and that he do pay to the complainant his costs of and incidental to the application and inquiry.

On 31st August, 1956, an order was made by the Disciplinary Committee constituted under the Solicitors Acts, 1932 to 1941, that the name of GEORGE WALKER, formerly of No. 30 Mauldeth Road, Withington, Manchester 20, now or recently confined in H.M. Prison, Leyhill, Gloucester, be struck off the Roll of Solicitors of the Supreme Court, and that he do pay to the applicant his costs of and incidental to the application and inquiry.

NORMAN EDWARD PORTER, of 7 Hanover Terrace, London, N.W.1, solicitor, having, in accordance with the provisions of the Solicitors Acts, 1932 to 1941, made application to the Disciplinary Committee constituted under the Act that his name might be removed from the Roll of Solicitors at his own instance on the ground that he desires in due course to be called to the Bar, an order was, on 31st August, 1956, made by the Committee that the application of the said NORMAN EDWARD PORTER be acceded to and that his name be removed accordingly from the Roll of Solicitors of the Supreme Court.

"The Solicitors' Journal"
Saturday, September 22, 1956

PERSISTENT CRUELTY

Cruelty while living apart

In the past, there has been some doubt whether persistent cruelty committed by a husband upon his wife while they are living separate and apart could be the basis of an order made by justices under the Separation and Maintenance Acts. The matter received consideration in the recent case of *Britt* v. *Britt* [1955] 1 W.L.R. 1272; 99 Sol. J. 872, although that case was not concerned with proceedings before magistrates but with an appeal against the dismissal of a wife's divorce petition alleging cruelty. To appreciate the matter fully in order to apply it to summary jurisdiction it may be helpful to consider the case in some detail.

The special commissioner based his decision on a passage in Rayden on Divorce, 6th ed., p. 523, that "Acts of cruelty which have taken place after cohabitation has ceased may be taken into account provided they are within the ambit of the marital relationship," based on *dicta* of Lord Merrivale, P., in *Simcock* v. *Simcock* (1932), 48 T.L.R. 374; 76 Sol. J. 345. In *Britt* v. *Britt* the wife alleged acts of cruelty prior to her husband's departure from the matrimonial home in 1950 as well as acts after he had ceased to live with her. The commissioner found that no cruelty had been proved up to 1950 and, while finding that the later acts were proved and that if they had occurred when the parties were living together he would have held that they constituted cruelty, he held on this occasion that, on the basis of the observations by Lord Merrivale and the passage in Rayden, the acts complained of could not be said to be cruelty for the purposes of the Matrimonial Causes Act, 1950. Of the cruelty alleged after cohabitation had ceased, the wife complained of an assault when she called at the matrimonial home to fetch her necessaries (she having left the previous day when her husband returned to spend the night there) and also of an assault as she was getting off a bus. The husband had then disappeared. The observations of Lord Merrivale and the passage in Rayden are, strangely enough, solely concerned with proceedings before justices and not applicable to divorce proceedings, as Morris, L.J., pointed out in *Britt* v. *Britt*.

Simcock v. *Simcock*, from which the observations are quoted, was an appeal by a husband against the making of a separation order on the ground of persistent cruelty, based on two assaults, one committed before, and the other after, the parties separated. In his judgment the President said: "We must look at the whole of the facts. It may well be that if the husband and wife were living apart, and as to some matter not concerned with the marital relationship there were acts of violence, it would have to be considered whether they were acts of violence within the statute, or whether they could support a charge of persistent cruelty within the statute; because the statute does undoubtedly deal with, and is no doubt limited to, the relations of husband and wife." It is suggested, with respect, that if justices are to follow this, they will be placed in some difficulty in interpreting what is or is not within the marital relationship. However, in *Britt* v. *Britt*, Denning, L.J., said that those observations of the President in *Simcock* v. *Simcock* were only *obiter dicta* and were thrown out as a suggestion without much consideration. He did not think they accurately represented the law. He saw no justification in law for introducing the qualification that the acts must take place within the ambit of the marital relationship. The court had simply to inquire, within the words of the statute, whether the husband had treated his wife with cruelty; it did not matter whether it took place while they were living together or while they were living apart; if he had treated his wife with cruelty she was entitled to her decree.

Of course, Denning, L.J., was dealing with a case of dissolution of marriage, but what he said appears to be equally applicable to an application for an order under s. 4 of the Summary Jurisdiction (Married Women) Act, 1895. If a wife satisfied the court, within the words of the statute, that her husband "shall have been guilty of persistent cruelty to her," she would be entitled to an order. It is not difficult to visualise a situation where the parties live apart and after an interval the husband starts to molest and annoy his wife and beats her on several occasions. For her own safety, the wife may wish to be fortified by the possession of a separation order and desire to come before the justices for this purpose. Denning, L.J., pointed out in *Britt* v. *Britt* that in *Kunski* v. *Kunski and Josephs* (1907), 23 T.L.R. 615, a judicial separation was granted on the ground of acts of cruelty which had taken place while the parties were separated under a deed. Hodson, L.J., agreed with Denning, L.J., but he thought that Lord Merrivale, P., had in mind the statute with which he was concerned, which had to do with persistent cruelty, and he was wondering whether, if a husband knocked his wife about in the street after he left her and had previously assaulted her while they were living together, the husband could then be regarded as persisting in the previous course of conduct.

In passing, it is interesting to note that prior to 1925 a wife could not succeed with an application for an order for persistent cruelty unless it caused her to leave her husband. Possibly, it would then be argued that that cruelty must of necessity have occurred while the parties were living together. However, the amendment to the 1895 Act by the Summary Jurisdiction (Separation and Maintenance) Act, 1925, s. 1 (1), provides that it is no longer necessary for the cruelty complained of to cause the wife to leave and live separately and apart. This was enacted, it is believed, because poorer wives often found it impossible to find a separate place to live in order to bring proceedings. It may be argued now that, because of that amendment, the contrary will apply and the cruelty alleged need not have taken place while the parties are living together.

The cumulative effect

"Cruelty" means the same whether the word is used in the Divorce Court or magistrates' court (*Lane* v. *Lane* (1896), 12 T.L.R. 249), but "persistent cruelty" means cruelty continued over a period of time and persevered in. It does not mean a sudden act of violence on a sudden quarrel: *per* Lord Merrivale, P., in *Goodman* v. *Goodman* (1931), 95 J.P. 95. In the same case, Langton, J., said: "Persistent cruelty must mean cruelty occurring on more than one occasion." In *Hudson* v. *Hudson* (1947), 91 Sol. J. 208, Lord Merriman, P., said: "Before justices, it is necessary to prove persistent cruelty and at least two such acts." (His lordship previously described those in the case as outrageous assaults.) "I am taking the simplest of all such cases, where there are two such acts. Proof of each is proof of cruelty, and each in turn forms part of the evidence establishing persistent cruelty . . . *A fortiori*, in the case of a course of conduct of a kind calculated to break the wife's spirit, it is the cumulative effect of the unkindness which sooner or later produces the offence of

persistent cruelty." In *Cornall* v. *Cornall* (1910), 74 J.P. 379, Deane, J., said that persistent cruelty must mean something more than cruelty. Before an order can be made the man must persist in his cruelty. The Divisional Court affirmed that the word "cruelty" in s. 4 of the Act of 1895 meant the same thing as cruelty had always meant in that court; but there had been inserted into the section the word "persistent." Persistent cruelty meant something more than cruelty. *Broad* v. *Broad* (1898), 78 L.T. 687, is quoted as authority that a number of acts committed on one day might amount to persistent cruelty. It is suggested, with respect, that what was said there was also *obiter* and must now be considered in the light of the judgments in *Goodman* v. *Goodman, supra.*

Where a husband is guilty of one serious assault upon his wife, she is not without a remedy before justices, for by the same section, s. 4 of the 1895 Act, if he is convicted summarily of an aggravated assault upon her within the meaning of s. 43 of the Offences against the Person Act, 1861, she may apply for an order. An aggravated assault is an assault "of such an aggravated nature that it cannot . . . be sufficiently punished under the provisions . . . as to common assaults and batteries."

J. V. R.

Company Law and Practice

PROVING A COMPANY'S INTENTION

An important practical point has arisen in some recent cases under the Landlord and Tenant Act, 1954, which serves to show that cases frequently come unstuck over "elementary" and "obvious" points that "everybody knows." As in such circumstances a client may suffer, no apology is made for an article based on these cases, which may show that this elementary practical point is not quite such common knowledge as some people may think. It will also underline how vital to successful preparation of a case is careful investigation, at an early stage, of what ought to be the purest routine to any company official.

Section 30 (1) (*f*) of the Landlord and Tenant Act, 1954, enables a landlord to resist an application by a tenant for the grant of a new lease on the ground that on the termination of the current tenancy the landlord intends to demolish or reconstruct the premises comprised in the holding, or a substantial part of those premises, or to carry out substantial work of construction on the holding, or part thereof, and that he could not reasonably do so without obtaining possession of the holding. The broader aspects of several recent decisions on the question of intention have been discussed in the Landlord and Tenant Notebook, and the only point to be considered in this article is how the intention of the landlord is to be ascertained when the landlord is a limited company.

Company management

Every company, by its articles of association, delegates, to some degree, its day-to-day management to its directors. Thus, art. 80 of Table A in the Companies Act, 1948, opens: "The business of the company shall be managed by the directors, who . . . may exercise all such powers of the company as are not, by the Act or by these regulations, required to be exercised by the company in general meeting . . ." It sometimes happens that substantial powers are delegated to a single director, especially when he is a managing director: thus art. 109 of Table A: "The directors may entrust to and confer upon a managing director any of the powers exercisable by them upon such terms and conditions and with such restrictions as they may think fit, and either collaterally with or to the exclusion of their own powers and may from time to time revoke, withdraw, alter or vary all or any such powers."

However, quite apart from the *de jure* position it is common practice, and ought to be general knowledge, that *de facto* in most companies dealing in properties a single individual, to a greater or lesser degree, controls the details of, and makes the decisions concerning, the company's property interests, subject only to a general policy direction by the whole board. There are, no doubt, plenty of exceptions, but the foregoing broad generalisation covers, for example, the managing directors or managers of most property companies, the estate managers of the multiple shop companies or the investment departments of insurance companies. It is a very convenient practice because investment in real property is a highly skilled matter requiring expert knowledge of many technical matters.

Nevertheless, the fundamental rule remains that a company, being an artificial person, can only legally act through the medium of those properly entrusted and authorised. It is at this point that matters have been going wrong.

A danger signal

The amber light first appeared in the Spring in a county court case: *A. and W. Birch* v. *P. B.* (*Sloane*) *and Cadogan Settled Estates Co.* [1956] 3 C.L. 208 (*a*). In this case it was held that it was not sufficient for the director or the secretary of a company to give evidence of the company's intentions; this must be shown by a resolution of the directors, or, if it was beyond their powers, of the company in general meeting.

A case of insufficient evidence of intention

The detailed facts of *Betty's Cafes, Ltd.* v. *Phillips Furnishing Stores, Ltd.* [1956] 1 W.L.R. 678; *ante*, p. 435, are worthy of study in the report as they will give some idea of the type of negotiations which are of frequent occurrence in property transactions. The secretary and a director of the respondent company had conducted negotiations on its behalf, and had caused rough plans and estimates to be prepared for structural alterations to the applicants' premises to make them suitable for the respondent company's business. The secretary had no authority to bind the company to carry out alterations. On 27th October, 1955, the applicants commenced proceedings for the grant of a new tenancy by the court. On 25th November, 1955, the board of the respondent company approved expenditure of £15,000 on the premises, based on an architect's estimate. The resolution did not identify any particular work. An earlier rough estimate had been £20,000. After the application to the court had been heard for four days the board of the respondent company resolved on 23rd April, 1956, that in the event of the company obtaining possession of the

premises the work specified in the architect's original estimates should be carried out forthwith and expenditure of £20,000 should be approved. These last minute efforts to retrieve the position failed, because, although the work for which the architect had originally specified and for which he had estimated the approximate cost as £20,000 was substantial and could not reasonably be carried out without obtaining possession of the premises, yet the company had not shown that at the material time, which was the date of the service of the notice of objection, it intended on the termination of the tenancy to carry out the work.

Danckwerts, J., explained the position, at p. 689: "A company is an artificial person and its intentions must be formed by those who are entitled to govern and to represent the company in regard to such matters. The articles of the respondent company are in usual form and enable the directors to exercise the powers of the company for all practical purposes. Sometimes, of course, a company may exercise its functions by means of some agent, but it does not appear to me that there is any such contention which can help the respondent company in the circumstances of this case . . . In the circumstances the intention of the respondent company can be discovered only from the acts of the board of directors as recorded in the minutes of the company. There is no minute recording any resolution of the directors to carry out the works suggested by the architect either at the determination of the current tenancy or at any time until the conditional resolution is passed on 23rd April, 1956, which is, it seems to me, too late."

When the intention must be held

The question of the time when the intention must be held by the company has twice been the subject of *dicta* in the Court of Appeal. In *Reohorn and Another* v. *Barry Corporation* [1956] 1 W.L.R. 845; *ante*, p. 509, Denning, L.J., said (at p. 850): "I ought to say that I look at the intention in this case as the county court judge did—the intention existing at the date of the hearing—which is, I think, the right time to take." In *Fleet Electrics, Ltd.* v. *Jacey Investments, Ltd.* [1956] 1 W.L.R. 1027; *ante*, p. 586, Lord Evershed, M.R., said (at p. 1036): "There has been in the cases some question whether the right date to look at for discovering the 'intention' is the date when the landlord gives his notice of objection, or the date of the hearing. In this case it is not necessary to express final conclusions on that matter, but I think that it has been agreed by all the counsel that a landlord who gives a notice of opposition, in which he says that on the termination of the tenancy he intends to reconstruct, etc., must at any rate prove that, when he gave it, he did in fact so intend. But it would also appear (and again counsel agree) that he would have to show that the intention persisted up to the date of the hearing, and had not by that date gone. If that is so (and it is only for this reason that I find it necessary to refer to it) evidence of what happened between the date of the notice and the date of the hearing will be relevant and admissible evidence, both as throwing light on the nature of the intention at the former date, and as showing that the intention was a real and persistent intention up to the date of the hearing."

The last named case will serve as a warning to anyone inclined to make light of this question of strict and formal proof of a company's intentions. The board of directors of the landlord company passed a resolution that "the company's property at Park Street, Walsall, Staffs, be developed by the conversion of the existing four shops into one store and that Mr. H. Werner Rosenthal, A.R.I.B.A., be instructed to prepare the necessary plans and the company's solicitors be instructed to take all the necessary preliminary steps in connection with the proposed reconstruction, and in due course to proceed to terminate the existing tenancies." The architect prepared plans, the solicitors took the necessary steps, consent of the head lessor to the alterations was obtained and planning permission was obtained. The oral evidence disclosed that it was the intention of the directors of the landlords that the premises should be used for the improvement of the third tenant, an associated company. The matter had not at any time been considered by the latter. The cost of the scheme had similarly not been considered either by the landlords or the associated company. The county court judge found that there was no such firm and settled intention as would satisfy s. 30 (1) (*f*) and granted new tenancies. An appeal was dismissed on the ground that the matter was one of fact and that there was evidence to support the judge's finding.

The following observations of Lord Evershed, M.R., are useful for the purposes of this article. At p. 1033 his lordship said: "It is clear that when, as in the present case, the landlord is a limited company, the existence of the intention (and particularly the proof of the quality of the intention, that it is firm and settled) can be established only through the directors or other principal officers of the company." Later, at p. 1035, "the fact that . . . [the associated company] . . . never proved that they had ever given a thought to a proposal which was, according to . . . [the landlord's chairman] . . . a family arrangement for their particular improvement, is obviously an impressive point."

Although the Court of Appeal felt unable to disturb the judge's finding of fact, the Master of the Rolls said, at the conclusion of his judgment, that the landlords may have been less than fortunate, an observation with which anyone with any knowledge of the procedure, delays and difficulties of a reconstruction scheme, and of the lack of meticulous formality which so often attends the relationships of associated companies, will readily concur.

The practical position

As the law now seems to regard strict formality as an essential ingredient in proving intention where a limited company is concerned, the following practical steps should be taken forthwith by all associated with the day-to-day affairs of such companies. It is strongly recommended that the initial steps are taken now (for example, examination, and, if necessary, amendment, of the articles) rather than wait until specific need appears: by then it may be too late.

1. *The Articles*

These should be amended, if necessary, so as to enable the directors to place the whole reconstruction scheme in the hands of one individual who can take all the necessary decisions on behalf of the company. Article 102 of Table A is a useful precedent. It provides: "The directors may delegate any of their powers to committees consisting of such member or members of their body as they think fit; any committee so formed shall in the exercise of the powers so delegated conform to any regulations that may be imposed upon it by the directors."

2. *The Decision*

The minute recording the decision to reconstruct should be precise and definite. It should appoint one of the directors as a committee under the articles to take all necessary steps

in the matter. It is also vital to ensure that if any subsidiary or associated company is involved similar action is taken by the other boards at or about the same time. If necessary the director who is responsible for implementing the decision of the parent company should be appointed to the boards of any other companies involved (the question of a maximum in the articles should be watched) so that the whole matter is formally under the control and supervision of one man.

3. *Continuation of the Intention*

The minutes of subsequent board meetings of all companies involved must from time to time contain some reference to the fact that the committee has reported progress, the nature of the progress, and an instruction by the board to proceed. The frequency of such reports is a matter of common sense, depending on how often board meetings take place. Where meetings are frequent a report every two months or so ought to be sufficient.

As to evidence of the landlord's intention at the hearing, the minute books and the one-man committee will obviously be needed. The architect and other technical experts should also be available, and should not only be prepared to deal with the individual scheme but should also be armed with some pretty blunt expert evidence that reconstruction schemes do not come to fruition overnight, but require a considerable amount of preparation and planning.

The result of the foregoing precautions should be that tenants who wish to raise technical points such as proof of authority, or proof of intention, will find all their requirements satisfied. They cannot then grumble if the matter then falls to be decided, as it should be, on its substance and on its merits.

H. N. B.

A Conveyancer's Diary

MISDESCRIBING OBJECT OF CHARITABLE GIFT

THE enormous number of charitable trusts in this country is no doubt a tribute to one of the better qualities in the national character. It is also a fairly frequent occasion of litigation. Many charitable objects (for example, the relief of distress among the members of a particular section of the community) are objects of more than one, sometimes many more than one, charitable association, and the names of associations with similar objects have a natural tendency to similarity which breeds confusion in the minds not only of testators but of their professional advisers as well. A legacy in a list of proposed legacies supplied to a solicitor for the purpose of incorporation in a will to "The Disabled Soldiers', Sailors' and Airmen's Association" may well sound so authentic that no check is made of the existence of the association at the time. That is what evidently happened in *Re Songest* [1956] 1 W.L.R. 897, and p. 528, *ante*, a case in which the part of the will which gave trouble, which is the only part of it reproduced in the reports, would appear to have been prepared with professional assistance. (If I am maligning the testatrix's solicitor or underestimating her own powers of testamentary composition by this suggestion, I apologise.)

There was in fact never any association in existence with that particular name. Claims were made on behalf of a number of associations which had similar names at the date of the will (in one case the name had been changed in the interval between the dates of the will and the death), and the broad object of which was the same—the provision of assistance, in one form or another, for disabled ex-servicemen. The trustees of the will applied for the directions of the court, and Vaisey, J., held that the association which the testatrix had intended to benefit was one which at the date of the will bore the name of "The Incorporated Soldiers', Sailors' and Airmen's Help Society." The institution known as The Star and Garter Home for Disabled Sailors, Soldiers and Airmen appealed from this order.

Before the Court of Appeal (and doubtless also in the court below, but there is no report of the arguments put forward in that court) both these institutions argued that the testatrix had in mind as the object of her gift one specific organisation which she had misdescribed, and that the function of the court therefore was to decide which one of the two competing organisations she had intended to benefit. The Court of Appeal took a different view of the problem before it. In the words of the Master of the Rolls, the premises on which that reasoning was based were not necessarily correct. Once it was established (he went on to say) that a mistake had been made in stating the intention, he was not persuaded that the court was bound to assume that the mistake did not extend to the assumption that there was more than one body and that she intended to pick one of two: it was a possibility that the testatrix thought that disabled ex-servicemen were looked after by some one body which combined the activities of both the competing bodies. (The activities of the two organisations in question were very different in detail, although as has been noted similar in their broad purpose of benefiting disabled ex-servicemen.)

Division between two institutions

Having reached that conclusion, the court applied the principle which is stated in Jarman on Wills (8th ed., vol. 1, p. 267), in the following way: "It sometimes happens that a legacy is given to a particular institution by a description equally applicable to more than one. It cannot here be presumed that the testator did not intend to select one in particular; for he may have known, and, considering the terms of the bequest, probably did know, only one answering the description; yet, as it cannot be ascertained which, the particular purpose fails; nevertheless, it is clear that the legacy will be applied *cy-près*, or divided between the two institutions."

The authority given for the proposition that in the circumstances the legacy can be divided between the two institutions (which would of course include the case where there are three or more institutions to which the description used by the testator equally applies) is *Re Alchin's Trusts* (1872), L.R. 14 Eq. 230. This is a decision which has come in for much criticism (to which this Diary has contributed: see 95 SOL. J. 781). First, it has been said, in the case of a gift to an individual who is misdescribed in the will, either some one individual takes, the misdescription being thus disregarded, or the gift fails *in toto*: a gift to "my nephew John Smith" is never divided, in the absence of a nephew John Smith,

between two nephews James Smith and John Brown. Secondly, the decision in *Re Alchin's Trusts* was expressed as following earlier authorities which, on examination, do not support the decision. The facts of the case were that a gift was made by will to the "Kent County Hospital," an institution which did not exist; the legacy was divided equally between the Kent and Canterbury General Hospital and the West Kent General Hospital.

Procedure by way of a scheme

It has been the practice in the Chancery Division recently to rationalise the division of a gift to a non-existent charitable institution between two or more institutions of similar names and with similar objects by directing such division to be made "by way of a scheme." The Attorney-General is usually made a party to any application in which the destination of a gift for charitable purposes is raised, so that if all else fails he can argue that the will discloses a general charitable intention on the part of the testator and that the gift, for lack of any precise object, should therefore be applied *cy-près* under a scheme. If the court inclines to a solution by division, the Attorney-General is thus usually present to say that he has no objection to a scheme being made there and then for the division of the gift between the successful institutions, in whatever proportions the court thinks fit to pronounce, as an application of the gift *cy-près*. In the case under review the Master of the Rolls referred to this practice and expressed his approval of it by applying it. The order which was made was to direct by way of scheme that the residue (the subject-matter of the gift) be divided equally between the two institutions which had appeared to argue their respective cases. This order was made subject to the approval of the Attorney-General, who had doubtless appeared as a party in the court below, but for reasons of costs had not appeared on the appeal.

The question whether the decision in *Re Alchin's Trusts* was right or wrong has thus become one of academic importance only; and I think that most of us could suggest many other more profitable subjects for speculation, academic or otherwise, than this. The important thing is that that decision, which had never, so far as I know, been discussed in any reported case in the considerable space of time which has elapsed since it was pronounced (the passing reference to it in *Re Preston's Estate* [1951] Ch. 878 cannot be called a discussion) has been explained, and that the practice which has grown up round it has been firmly established.

"A B C"

Landlord and Tenant Notebook

CONSENT TO OPERATION OF NOTICE TO QUIT FARM

R. v. *Agricultural Land Tribunal for Eastern Province of England; ex parte Grant* [1956] 1 W.L.R. 1240 (C.A.); *ante*, p. 650, is mainly a lesson in how to approach a question raised under the Agricultural Holdings Act, 1948, s. 24 (1): whether consent should or should not be given to the operation of a landlord's notice to quit challenged by counter-notice.

The scheme of things is as follows: When the tenant serves a counter-notice, the notice to quit "shall not have effect unless the Minister consents to the operation thereof." Thus s. 24 (1), and there is no indication of what the Minister is to consider. The landlord can then apply for the consent (procedure governed by the Agriculture (Control of Notices to Quit) Regulations, 1948 and the power delegated to the county agricultural executive committee under the Agriculture (Delegation to County Agricultural Executive Committees) Regulations, 1948). The second subsection sets out exceptions. By s. 25 (1): "Without prejudice to the *discretion* of the Minister in a case falling within paras. (*a*) to (*e*) of this subsection, the Minister *shall* withhold his consent under the last foregoing section to the operation of a notice to quit an agricultural holding unless he is satisfied . . ." and then follow five alternative conditions or sets of conditions, (*a*) to (*e*). Of these, (*a*) runs: "that the carrying out of the purpose for which the landlord proposes to terminate the tenancy is desirable in the interests of efficient farming, whether as respects good estate management or good husbandry or otherwise."

The facts found

The landlord concerned in the recent case was himself an exceptionally efficient farmer. He owned and occupied other land which nearly surrounded the tenants' holding of some 63 acres. The tenants were reasonably efficient farmers. And, not far off, they farmed a larger parcel of land, some 217 acres, the two constituting a unit.

The landlord invited the C.A.E.C. to find that the tenants were farming inefficiently. This hardly seems a sound step; such a finding would not in itself have amounted to a finding required by para. (*a*) or any other paragraph of s. 25 (1); and no doubt the applicant was asked to explain why he had not availed himself of one of the exceptions provided in s. 24 (2): either in para. (*d*) (failure to remedy breach of term consistent with good husbandry) or in para. (*e*) (irremediable breach of such). However, the committee considered "that both the landlord and the tenants were farming their land satisfactorily, but had formed the opinion that the all-round level of production and standard of farming of the landlord was slightly higher and also, from the information put before them at the hearing and the situation of the land in question in relation to the other land occupied by the parties, it was in the interests of farming efficiency to grant consent to the operation of the notice to quit."

Thereupon the tenants required the decision to be referred to the Agricultural Land Tribunal. That body set out its decision in the tenants' favour at some length, the important findings being (i) that although the tenants' standard of management did not reach the exceptionally high standard of that of the landlord, nevertheless the tenants were farming reasonably well, having regard to the character and situation of the unit, and accordingly were entitled to the protection afforded by the Act to reasonably efficient tenants, and (ii) that any increase in production resulting from the working of the landlord's land with the demised land would not offset the adverse effect the loss of these 63 acres would have on

the tenants' total holding of 280 acres and, therefore, from the point of view of overall production it was desirable that the demised farm should remain part of the tenants' unit, and (iii) that the conditions contained in para. (*a*) of s. 25 (1) of the Agricultural Holdings Act, 1948, were not fulfilled. Accordingly, it withheld its consent. As will presently be seen, it was this last finding, in which the tribunal expressed its conclusion, which betrayed a fatal confusion of issues.

The errors

The Divisional Court, to which the landlord then applied for a writ of certiorari (and for one of mandamus), quashed the order and ordered the tribunal to hear the reference and determine it according to law; the tenants now appealed to the Court of Appeal. One mistake which the tribunal was found to have made, or appeared to have made, was to consider not merely the efficient farming of the holding, the subject of the notice to quit, but also that of the land occupied by the landlord. "They thought that, if the landlord could not farm efficiently the land which was in his own occupation, the tenant, who was farming efficiently, could be required to vacate his holding," Lord Goddard, L.C.J., had said in *R.* v. *Agricultural Land Tribunal for the Wales and Monmouth Area; ex parte Davies* [1953] 1 All E.R. 1182; while it may not be the case that the tribunal took quite that view, both Singleton, L.J., and Morris, L.J., took the opportunity of emphasising that "desirable in the interests of efficient farming" meant "of the efficient farming of the holding to which the notice to quit relates."

This interpretation may be open to some criticism when one recalls that there is now no minimum size for an agricultural holding, but another passage in the same judgment of Lord Goddard showed very clearly how the tribunal had gone wrong. "The subsection provides that, before giving his consent, the Minister must be satisfied that the case falls within para. (*a*) to para. (*e*) of s. 25 (1), *but, even if the Minister finds certain facts* . . . which would entitle him to give his consent to the operation of the notice, he may, in the exercise of his discretion, determine not to do so."

The first thing a C.A.E.C. or tribunal has to do, then, is to consider whether some condition laid down in s. 25 (1) has been fulfilled; if it is fulfilled, then comes the question of discretion. It followed that the "conclusion" expressed as "that the conditions contained in para. (*a*) of s. 25 (1) of the Agricultural Holdings Act, 1948, were not fulfilled" showed a wrong approach; the tribunal had, according to Singleton, L.J., apparently not decided whether the requirement relied upon by the landlord had been fulfilled; according to Morris, L.J., and Romer, L.J., the mixture of considerations showed that the tribunal had based its conclusion on irrelevant matters, including some matters which might have to be considered if and when the question of discretion arose.

Odious comparison

The decision is inevitably largely a negative one, telling us what not to do rather than what to do. One cannot expect much guidance on the question of discretion, positive or negative, but what I suggest should be guarded against should be the notion that when landlord and tenant are both competent farmers a landlord can satisfy para. (*a*) by showing that he happens to be the more competent. I mention this because some support could be found for the proposition by the divorcing of passages from their contexts: the C.A.E.C. made the comparison, as mentioned, and no direct criticism of their having so acted will be found. Singleton, L.J., said at one stage: "It was said that if the landlord, whose land is practically all around this particular piece of land, was allowed to farm it, he (with his *greater* skill in farming and with his farm buildings and other land close to this particular piece of land) would be able to produce *better* results"; but the learned lord justice was merely pointing out that the effect, on the tenants' production, of being deprived of the 63 acres was not relevant to the question under para. (*a*). Likewise, when Romer, L.J., said: "I am not altogether sure that the tribunal was not intending to say . . . that the landlord has not satisfied the tribunal that the 63 acres would be *more* efficiently farmed if effect were given to the proposals," there was no implication that such a finding would have been pertinent.

R. B.

HERE AND THERE

ON IRELAND'S EYE

THE Abbey Theatre in Dublin has put on a new play called "Strange Occurrence on Ireland's Eye," by Denis Johnston. Ireland's Eye is a little uninhabited island about three-quarters of a mile long, lying a mile and a half out from Howth Harbour in County Dublin. It has a fine beach, a Martello tower and the ruins of a chapel dedicated to St. Nesson. It must have owed its name to its ancient use as an outpost and look-out. In modern times its chief attraction has been as a place for picnics and excursions. Quite recently (in the past ten years or so) the scientists have discovered it as a mysterious centre of biological monstrosities, ants partly male and partly female, living mosaics of the characteristics of the two, in such numbers as to constitute a challenge to the accepted ideas of orthodox genetics. But the play about the "strange occurrence" on the island is not another Insect Play, however rich the material which an ingenious dramatist might quarry from the facts collected by the scientists. It is an adaptation and interpretation of a murder mystery played out on Ireland's Eye just over a hundred years ago, on 6th September, 1852. It remains a mystery to this day because, although the suspect was convicted on strong circumstantial evidence, sufficient doubt was felt about the correctness of the verdict to induce the authorities to adopt the usual illogical British compromise by which the death sentence was commuted to penal servitude. In the result the condemned man spent twenty-six years in prison.

DEATH MYSTERY

THE tragedy was a piece with two chief parts, William Kirwan, a thirty-five-year-old artist, and Maria, his handsome thirty-year-old wife. They had been married for ten years, but had no children. They had come from their home in Dublin to spend their holidays at Howth. Two or three times they had been rowed out to the island, he to sketch and she to bathe. On 6th September, they embarked at Howth at ten in the morning in the boat of Nangle, a local fisherman, who had instructions to fetch them again at eight in the

evening, almost an hour and a half after sunset. From noon till four another party was on the island and saw the Kirwans. At eight o'clock Nangle and his cousin reached it again when darkness was already falling. In answer to their hail, Kirwan answered and they found him standing alone at the landing place under the Martello tower. He said he had not seen his wife for the last hour and a half. After a search, her dead body, clad in her bathing dress and lying on her wet bathing sheet, was found in a long creek or inlet. The tide was out and at the spot where she lay the water had fallen from 2½ feet at 6.30 to 3 inches at eight. She was still supple. At the inquest, following a cursory examination by a medical student, the verdict was one of simple drowning, but in the course of the following month suspicious circumstances gained public currency and in the result there was an exhumation and Kirwan was charged with murder.

INCONCLUSIVE TRIAL

THE trial opened at the Green Street court in Dublin on 8th December. The most dangerous evidence against the accused was that about seven o'clock, between day and dark, four people on the mainland and also the steersman of a boat making for Howth Harbour had heard three great shrieks coming from the island, cries as of a person in great distress. Their evidence was unshaken. The landlady of the Kirwans at their holiday lodgings testified to quarrelling between them, accompanied by sounds of threats and violence on his part. It was also proved that for years Kirwan had maintained a second household in a Dublin suburb with a woman named Teresa Kenny by whom he had seven children. Counsel made contradictory statements on the question whether Mrs. Kirwan had long known of the association and had acquiesced in it, or whether she had only recently learnt of it, but no evidence was called on the point. The suggestion of the prosecution was that her husband had smothered her with her wet bathing sheet, that of the defence that she had died of an epileptic fit. A point which must have weighed considerably against him was that he denied having heard anything of the terrible shrieks which had undoubtedly resounded from the island. Medical evidence was, of course, called on both sides. An accused person was not at that time a competent witness. The jury took over four hours to reach their verdict and Mr. Justice Crampton expressed his agreement with it in passing sentence of death. A good deal of public controversy ensued and the death penalty was finally remitted. This is one of those cases in which British legal tradition, limiting the inquiry to the circumstances directly relevant to the events on the island, produced a decidedly unsatisfactory result. A French court would have gone into the whole background of the Kirwans' life to find out whether they were the sort of people to have behaved as they were alleged to have done. The individual actions of a human being are all double-edged or multiple-edged and can only be properly interpreted in the light of his whole personality and antecedents. It is too tempting to reverse the process and pass an easy judgment on the whole personality from one or two isolated circumstances. The dramatist has wider scope for speculation than the juryman, but unfortunately he also has wider scope for invention and rearrangement of his material. The events of 1852 still remain an unpenetrated mystery.

RICHARD ROE.

Country Practice

SHAREHOLDERS' MEETINGS

Now that all is quiet in the boardroom of the Birmingham Small Arms Company, a useful comparison might be made with the Fussingham Bus Company affair. Not that there are many similarities; it just happens that the Fussingham Bus Company (a rather smaller concern than B.S.A.) was the one company which ever fell apart while under my professional care. I should add that I was an articled clerk at the time.

Old Fussingham, long since deceased, was a former coachman who risked his all in retiring from private service and acquiring a motor bus. He prospered, and each of his many sons, on growing up, found a seat—a driver's seat—waiting for him in the family business. In 1925, when they were all grown up, there were at least a dozen buses. A company was then formed, with old Mr. and Mrs. Fussingham as the directors, a much revered solicitor's clerk as secretary, and the children as the main shareholders.

Competition in those days was pretty fierce; the benefits of the Traffic Acts of the early thirties, so warmly appreciated by Women's Institutes planning a criminal shopping outing, had yet to be felt. Bus companies could undercut each other's fares, and village branches of the British Legion could organise a weekly trip to see Big Football without risk of fines, threats and disenlicencement being visited upon the operator. In those days it was rather difficult to undercut the Fussingham Bus Company's fares, and any operator offering a superior service found management and labour of the Fussingham Company combining to oust the intruder. There was a communal spirit rather lacking in present-day industrial concerns. One might reflect on how much happier things might have been at the British Motor Corporation if, like the Fussingham Bus Company, half of the labour force were the children of the combined board of directors.

The Annual Meeting always happened in the autumn. I remember this, because there was always a big bowl of fine apples on the table, newly plucked from Mrs. Fussingham's orchard, seen through the open french windows. Our revered managing clerk, reading the minutes, found it a little distracting to hear, as the shareholders bit lustily into the apples, so many sploshing noises; but they were that kind of apple. However, when the minutes had been confirmed it was quite easy for him to hold an apple in one hand and a fountain pen in the other while guiding the meeting along its accustomed path.

Take-over bids, of a sort, were occasionally made by competitors who had failed to acquire any part of the business in any other way. These were rejected outright, and the shareholders never sought to question the board's policy in such matters—Dad and Mum, they conceded, knew best.

At last, in the early thirties, an offer from the Enormous Finance Company was received; and the sum offered was so immense that even Mr. and Mrs. Fussingham were impressed. They were thinking of retiring, anyhow; so a reply was sent,

viewing the offer unfavourably, but leaving the door open. The Finance Company then suggested a meeting in London, all expenses paid. The Fussingham directors, entreated by their offspring, then stipulated a meeting in London, on similar terms, with *all* the shareholders *and* their wives.

The story of the Fussingham family's visit to London belongs to Light Literature, and therefore has no place in these columns. Suffice it to say that shortly afterwards the company ceased to exist and, at the time, it seemed that the financial settlement reached was too good to be true.

I just thought I would mention, for the benefit of those called upon to advise captains of industry, that a large bowl of apples is a great help in running a company. Very few directors have been removed from office while the shareholders are actually munching.

"HIGHFIELD"

CORRESPONDENCE

[The views expressed by our correspondents are not necessarily those of "The Solicitors' Journal".]

One-man Firms

Sir,—I read with interest the remarks concerning the above in "Talking 'Shop'" in your issue of the 15th September. I see no reason, however, why the sole practitioner should be faced with the additional, and possibly substantial, financial burden of fidelity insurance as suggested. After two years as an assistant, fifteen years as a partner in a fairly large provincial firm and finally a short period on my own account, I would not willingly return to partnership.

There is no reason why the sole practitioner should be an inferior risk from the point of view of the compensation fund if a proper system of book-keeping and audit is adopted. In my own case, within two working days after the end of each calendar month, a trial balance is prepared, checked with the bank statements, and audited by my accountant, who checks every receipt and payment. My books are kept by a cashier/typist who, although without any experience of book-keeping, was able to produce her first balanced account within three months after employment by me, and has subsequently had no difficulty in doing so. A trained cashier is not therefore necessary and, of course, impossible with a staff of only five. I have an assistant solicitor who is at liberty to inspect the books and is encouraged to do so in order to gain experience, and to assist during holidays or illness of the cashier.

If I were tempted to make an unlawful transfer from clients' account, this would require the full connivance of two other persons, and would be discovered by the accountant in any event within a month. I should imagine the risk of loss in my case is certainly no more, and possibly less, than with a partnership. The cost of my system is not unduly high, having regard to the other advantages, since not only are dormant accounts inspected monthly but any small error can be corrected whilst the circumstances are fresh in my mind instead of possibly eleven months later as is the case with an annual audit. This system also reduces to a minimum the risk of dishonesty by employees which is, in my experience, very high in the case of busy partners and a full-time cashier.

There is, of course, much more risk of loss in the case of a sole practitioner who acts as his own cashier, but the inability to afford to employ a trained cashier is obviously not a justification for this being done, and even here a monthly audit would be beneficial. Its cost is, I should imagine, much less than fidelity insurance, since the latter would have to cover a substantial sum (possibly several months' credits to clients' account) and it is obviously preferable as it checks incipient loss rather than compensates after the event. After all, I suppose most dishonesty develops from small "loans" from clients' account which gradually get out of hand, rather than from a single calculated raid on that account by a solicitor who intends to abscond or disregards the consequences. If the latter is contemplated, the partnership account is equally open to loss, perhaps more so in view of the larger amount to credit of the account in the case of a larger partnership firm.

FRANK HIGGINS.

Wakefield.

BOOKS RECEIVED

"Taxation" Key to Income Tax and Sur-tax. Finance Act Edition, 1956. Edited by RONALD STAPLES. pp. 223. 1956. London: Taxation Publishing Co., Ltd. 10s. net.

The Construction of Deeds and Statutes. Fourth Edition. By Sir CHARLES E. ODGERS, M.A., B.C.L., of the Middle Temple, Barrister-at-Law. pp. xxvii and (with Index) 354. 1956. London: Sweet & Maxwell, Ltd. £1 15s. net.

The Law of Stamp Duties (Alpe). Twenty-fourth Edition and Supplement. By PETER E. WHITWORTH, B.A., of the Middle Temple and Lincoln's Inn, Barrister-at-Law, and JAMES MACKENZIE, of the Office of the Controller of Stamps, Inland Revenue. pp. lxiv and (with Index) 525. 1956. London: Jordan & Sons, Ltd. £2 15s. net.

Clean Air. Supplement to the *Leeds Journal*, September, 1956. pp. 144. 1956. Leeds: The Leeds Incorporated Chamber of Commerce. 5s. net.

Oyez Practice Notes, No. 5: Apportionments for Executors and Trustees. Second Edition. 1956. By J. F. JOSLING, Solicitor of the Supreme Court, assisted by CHARLES CAPLIN, LL.B., Solicitor of the Supreme Court. pp. 39. 1956. London: The Solicitors' Law Stationery Society, Ltd. 3s. 6d. net.

The Law of Restrictive Trade Practices and Monopolies. By H. HEATHCOTE-WILLIAMS, M.A. (Oxon), one of Her Majesty's Counsel, EMRYS ROBERTS, M.B.E., M.A. (Cantab.), LL.B. (Wales), of Gray's Inn, Barrister-at-Law, and RONALD BERNSTEIN, D.F.C., B.A. (Oxon), of the Middle Temple, Barrister-at-Law. pp. xv and (with Index) 221. 1956. London: Eyre & Spottiswoode (Publishers), Ltd. £1 16s. net.

Beds and Roses. By DENYS ROBERTS. pp. 231. 1956. London: Methuen & Co., Ltd. 12s. 6d. net.

OBITUARY

MR. H. McILQUHAM

Mr. Harold McIlquham, late a solicitor in the Estate Duty Office, died on 3rd September, aged 82.

MR. R. N. D. WALKER

Mr. Roderick Noel Duncan Walker, solicitor, of Birmingham, died on 10th September, aged 59. He was admitted in 1931.

REVIEWS

Clarke Hall and Morrison's Law Relating to Children and Young Persons. Fifth Edition. By A. C. L. MORRISON, C.B.E., formerly Senior Chief Clerk of the Metropolitan Magistrates' Courts, and L. G. BANWELL, Chief Clerk, Bow Street Magistrates' Court. 1956. London: Butterworth & Co. (Publishers), Ltd. £4 10s.

This book covers a wide field. It deals with the criminal code relating to juveniles, the provisions relating to neglect or cruelty to children, child care, child life protection, adoption, guardianship and marriage of infants, legitimacy and family allowances. In addition to the statutes, it contains the relevant Statutory Instruments in full and—an especially useful feature—copies of many official circulars relating to the matters dealt with. It does not cover the subject of contracts and torts of infants or matters relating to wards of court, but it is designed as a practical book for the use of prosecuting solicitors, magistrates' clerks, town and county clerks and children's officers. To such this book will be invaluable, containing as it does so much information that cannot be obtained without great trouble from any other source. The solicitor in private practice will also find it of value for its notes on adoption and guardianship of infants. The new edition has been edited with care and brought up to date, so far as is possible in this world of ever-changing law, and the editors have been able to refer in the preface to amending legislation. We can recommend this book unreservedly, although we do feel that the price is rather high.

De-rating and Rating Appeals. Volume 26—1955. Edited by F. A. AMIES, B.A., F.C.I.S., F.R.V.A., of Gray's Inn and the North Eastern Circuit, Barrister-at-Law. 1956. London: The Solicitors' Law Stationery Society, Ltd. £2 5s. net.

De-rating and Rating Appeals for 1955 deals with twenty-four decisions of the Lands Tribunal, ten of the Court of Appeal, one of the House of Lords and five of the Lands Valuation Appeals Court (the Scottish appeals all have a persuasive significance in English rating law). The index of subject-matter, which had not appeared in other recent volumes, is a useful feature.

IN WESTMINSTER AND WHITEHALL

STATUTORY INSTRUMENTS

Birmingham-Great Yarmouth Trunk Road (Duddington By-Pass) (North) Order, 1956. (S.I. 1956 No. 1386.) 5d.

Coast Protection (Rate of Interest) (Scotland) Regulations, 1956. (S.I. 1956 No. 1389 (S.70).) 5d.

Devon River Board (Abolition of the River Teign Drainage District) Order, 1956. (S.I. 1956 No. 1398.) 5d.

Distress for Rates Order, 1956. (S.I. 1956 No. 1403.) 5d.

London-Brighton Trunk Road (Pease Pottage Diversion) Order, 1956. (S.I. 1956 No. 1385.) 5d.

London-Edinburgh-Thurso Trunk Road (Chilton By-Pass) Order, 1956. (S.I. 1956 No. 1384.) 5d.

London-Folkestone-Dover Trunk Road (Dover Docks Eastern Approach Roads) Order, 1956. (S.I. 1956 No. 1392.) 5d.

Milk (Special Designations) (Specified Areas) (No. 2) Order, 1956. (S.I. 1956 No. 1409.) 5d.

Reading Corporation Water Order, 1956. (S.I. 1956 No. 1396.) 5d.

Retention of Cables, Mains and Pipes under Highways (Somersetshire) (No. 1) Order, 1956. (S.I. 1956 No. 1395.) 5d.

Schools Grant Amending Regulations No. 7, 1956. (S.I. 1956 No. 1394.)

Stopping up of Highways (Buckinghamshire) (No. 5) Order, 1956. (S.I. 1956 No. 1393.) 5d.

Stopping up of Highways (East Sussex) (No. 4) Order, 1956. (S.I. 1956 No. 1390.) 5d.

Stopping up of Highways (Northumberland) (No. 2) Order, 1956. (S.I. 1956 No. 1391.) 5d.

Wages Regulation (Retail Food) (England and Wales) (No. 2) Order, 1956. (S.I. 1956 No. 1387.) 1s. 1d.

[Any of the above may be obtained from the Government Sales Department, The Solicitors' Law Stationery Society, Ltd., 21 Red Lion Street, London, W.C.1. The price in each case, unless otherwise stated, is 4d., post free.]

POINTS IN PRACTICE

Change of Forename on Adoption

Q. An illegitimate child was born to A. Brown and he has been registered in the name of John Brown. He is now to be adopted and the adopters desire him to be called *David* Smith—Smith being their surname. Is it possible to alter the Christian name from John to David?

A. If the child has been baptised, the Christian name "cannot be altered in the adoption order, but other names can be added," said a direction of the Chancery judges formerly set out in the Annual Practice. (The reference is to High Court adoptions, but the principle seems applicable to adoption matters in other courts.) On the other hand, the Christian names given on registration and set out in the birth certificate need not be retained in the adoption order. That order and the title of the proceedings should use the names by which the adopter desires to call the child, identification of the child to whom the proceedings relate with that mentioned in the birth certificate being effected by affidavit. So John Brown can become David Smith unless he has been baptised, in which case he can become David John Smith or John David Smith. The schedules to the prescribed forms of adoption order in both the county court and the juvenile court have columns for "name and surname of child," and footnotes direct that where there is a change only the names by which the infant is to be known are to be entered.

Questions, which can only be accepted from practising solicitors who are subscribers either directly or through a newsagent, should be addressed to the "Points in Practice" Department, The Solicitors' Journal, 21 Red Lion Street, London, W.C.1.

They should be **brief, typewritten in duplicate,** and accompanied by the name and address of the sender **on a separate sheet,** together with a **stamped addressed envelope.** Responsibility cannot be accepted for the return of documents submitted, and no undertaking can be given to reply by any particular date or at all.

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